Editor's note: appealed -- (two cases) Civ.No. 81-307 and sub nom. Geosearch v. Watt, Civ.No. 81-306, aff'd, (D. Wyo. Feb. 3, 1982); aff'd in part, rev'd in part, No. 82-1444 (10th Cir. Nov. 7, 1983), 721 F.2d 694; cert. denied, 104 S.Ct. 2347, 466 US 972 (May 14, 1984)

JACK ZUCKERMAN ET AL.

IBLA 81-350 Decided July 22, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, sustaining in part protest against and canceling oil and gas lease W 61810; voiding overriding royalty interests in this lease; declaring that May Petroleum, Inc., is not a bona fide purchaser of 100 percent of record title; and rejecting drawing entry cards for the leased parcel drawn with second and third priority.

Affirmed in part, reversed in part, and remanded.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Sole Party in Interest -- Oil and Gas Leases: First-Qualified Applicant

   When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Sole Party in Interest -- Oil and Gas Leases: First-Qualified Applicant

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest (which, by its own terms, does not apply to the service agreement) with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

3. Equitable Adjudication: Generally -- Estoppel -- Federal Employees and Officers: Authority to Bind Government -- Oil and Gas Leases: Applications: Generally

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level, and where BLM officials engaged in no "affirmative misconduct."

4. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Bona Fide Purchase

A party which purchased an oil and gas lease is a bona fide purchaser of this interest where, throughout the time it

agreed to purchase the lease, paid fair value, and formally requested approval of the assignment, BLM's records indicated that BLM had resolved a question about the validity of the underlying offer in favor of the offeror and had proceeded to issue the lease to him, and where there had been no formal protest against the lease, provided that the purchaser of the lease had no actual knowledge of any defect in the underlying offer.

5. Oil and Gas Leases: Bona Fide Purchaser -- Oil and Gas Leases: Cancellation -- Oil and Gas Leases: Overriding Royalties

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

APPEARANCES: David B. Kern, Esq., et al., Milwaukee, Wisconsin, for Jack Zuckerman and Resources Service Company, Inc.; Melvin Leslie, Esq., Salt Lake City, Utah, for Geosearch, Inc., and Elizabeth Carter; Gaynell C. Methvin, Esq., Dallas, Texas, for May Petroleum, Inc.; Harold J. Baer, Jr., Esq., Office of the Regional Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On October 25, 1977, Jack Zuckerman filed a simultaneous noncompetitive oil and gas lease offer drawing entry card (DEC) for parcel WY 230 which was drawn with first priority by the Wyoming State Office, Bureau of Land Management (BLM), in the November 1977 drawing. The DEC, which was apparently completely filled out, bore Zuckerman's signed certification that he was the sole party in interest in the offer and lease, if issued. On November 18, 1977, BLM notified Zuckerman that he was entitled to an oil and gas lease for the parcel and that the first year's rental was due.

On January 12, 1978, BLM issued Zuckerman a lease for this parcel, effective February 1, 1978.

On June 23, 1978, the Transcontinent Oil Company (Transcontinent) filed a request for approval of an assignment to it of 100 percent of Zuckerman's record title to the lease. The assignment, which was executed by Zuckerman on June 6, 1978, and by Transcontinent on June 21, 1978, indicated that Zuckerman would retain a 5 percent overriding royalty interest in the lease, that is, the right to 5 percent of any production which might be realized from the lease. On January 12, 1978, BLM approved this assignment, effective February 1, 1978.

On July 17, 1978, Engle filed a copy of an assignment to him of a percentage of the overriding royalty interest which Zuckerman had retained. BLM did not approve this assignment, as it does not routinely approve assignments of overriding royalties, but merely puts them in its records for informational purposes.

On November 28, 1977, a copy of a letter dated November 16, 1977, from Fred L. Engle, d.b.a. Resource Service Co. (now Resource Service Company Inc.) (RSC), to Zuckerman was filed with BLM, presumably by Engle. This letter refers to a service agreement between Engle and Zuckerman containing a sales agreement and alludes to the fact that it had been suggested that this sales agreement gave Engle an interest in his clients' offers. In this letter, Engle advised Zuckerman as follows:

> To remove <u>any</u> doubt that our clients are in fact the exclusive owners of their leases and to protect their best interests we have informed [BLM] that we do not consider this exclusive clause binding if it created an interest in us. [BLM] has suggested that if the sales agreement is signed <u>after</u> the drawing there is no question presented. [Emphasis in original.]

Engle attached a copy of the new service agreement, which Zuckerman apparently proceeded to sign on November 20, 1977. A copy of this new service agreement was also filed with BLM on November 28, 1977.

On October 3, 1978, Geosearch, Inc. (Geosearch), filed a protest against the continued validity of 14 leases, including W 61810. Geosearch asserted an interest in the matter based on an agreement with Elizabeth Carter, whose DEC for this parcel had been drawn with second priority in the November 1977 drawing. Carter apparently agreed to assign to Geosearch a percentage of whatever rights she still held to receive the lease.

Geosearch's protest asserted that BLM had issued this lease to Zuckerman in violation of 43 CFR 3100.0-5(b), 3102.7, and 3112.5-2, in that Fred Engle had had an interest in Zuckerman's offer at the time it was filed which was not disclosed, and which effectively and illegally gave Engle an increased chance of success in the drawing.

Geosearch sought cancellation of all lease interests, including overriding royalty interests, remaining in the hands of persons who were not bona fide purchasers and requested that BLM issue such interests to it as the successor second drawee. BLM dismissed this protest on October 5, 1978, noting that the lease had been assigned to Transcontinent effective July 1, 1978, and reassigned to May Petroleum, Inc. (May), effective August 1, 1978, and stating that it believed that the second drawee (Carter) had no interest left to assign to Geosearch.

On July 31, 1978, May filed a request for approval of an assignment to it of 100 percent of transcontinent's record title to this lease. BLM approved this assignment on August 29, 1978, effective August 1, 1978.

On September 15, 1978, May filed a copy of an agreement assigning a one-half percent overriding royalty interest to American Express Corp. BLM, as above, did not respond to this filing.

On appeal to this Board, we vacated BLM's denial of Geosearch's protest, noting that the offer of the second drawee remained viable, as BLM had never rejected it. Geosearch, Inc., 41 IBLA 291, 293 (1979). We also remanded the matter to BLM to allow Geosearch to present prima facie evidence countering May's assertion on appeal that it had acquired and held its lease interest as a bona fide purchaser, as provided in 43 CFR 3102.1-2(c). Id. at 294. 1/

On August 27, 1977, May filed an affidavit of C. R. Brown, its manager of exploration for its Rocky Mountain region, reiterating its belief that it had acquired this lease in good faith. On October 17, 1979, BLM directed Geosearch to file prima facie evidence refuting this assertion.

Also, on October 17, 1979, BLM directed Zuckerman to provide it with a copy of his service agreement with Engle in order to determine whether his DEC was defective. On November 13, 1978, Zuckerman filed a copy of this service agreement, dated August 14, 1977, which apparently gave Engle a vested right for 5 years to a specific share in the proceeds of the sale of any lease won by Zuckerman.

On December 18, 1979, Geosearch filed an affidavit from Melvin Leslie, Esq., its attorney, asserting that, when Transcontinent and May purchased their interests in this lease, they should have been alerted to the possibility that Zuckerman's lease was defective in view of this Board's holdings concerning other of Engle's clients on

1/ This procedure was recently considered and approved by Judge Kerr in connection with an appeal from our decision on another of Geosearch's protests. Geosearch, Inc. v. Andrus, 508 F. Supp. 839 (D. Wyo. 1981).

August 19, 1977, in Lola I. Doe, 31 IBLA 394 (1977); on September 12, 1977, in Sidney H. Schreter, 32 IBLA 148 (1977); and on March 22, 1978, in Alfred L. Easterday, 34 IBLA 195 (1978), and should have examined Zuckerman's service agreement with Engle. Geosearch asserted further that the record contained an explicit reference to the service agreement (Engle's letter of November 16, 1977, to Zuckerman) so that Transcontinent and May knew, or should have known, of its existence, and are properly charged with constructive notice of its contents, including the interest-creating provision, and so should have known that Zuckerman violated the regulations by not disclosing the existence of this interest when making his offer.

On January 19, 1981, BLM held that Engle had held an interest in Zuckerman's offer at the time he filed it in October 1977; that Engle's unilateral filing of an amendment and disclaimer did not alter this fact; that Zuckerman's offer violated 43 CFR 3102.7 and 3112.5-2 (1979) because of Engle's interest; that May had received its interest in this lease from Transcontinent prior to BLM's approval of assignment to Transcontinent, so that May was not a bona fide purchaser; and that the lease should therefore be canceled. BLM also held that the overriding royalty interests retained by Zuckerman and Engle were null and void ab initio. Finally, BLM held that Geosearch was not entitled to any interest in the lease and rejected and returned the DEC's that had been drawn with second and third priority for this parcel in November 1977. RSC, Zuckerman, May, Carter, and Geosearch appealed BLM's decision. 2/

We have considered the question of the validity of offers filed by RSC clients in these circumstances many times in the past and have held consistently that they must be rejected. Woods Petroleum Corp., 55 IBLA 348 (1981); Robert E. Belknap, 55 IBLA 200 (1981); Wilbur G. Desens, 54 IBLA 271 (1981); Inexco Oil Co., 54 IBLA 260 (1981); Home Petroleum Corp., 54 IBLA 194 (1981); Estate of Glenn F. Coy, 52 IBLA 182, 88 I.D. 236 (1981) (appeal pending); D. R. Weedon, Jr., 51 IBLA 378 (1980) (appeal pending); Donald W. Coyer (On Judicial Remand), 50 IBLA 306 (1980), aff'd, Coyer v. Andrus, Civ. No. C80-370K (D. Wyo. May 5, 1981) (appeal to 10th Cir. pending); Frederick W. Lowey, 40 IBLA 381 (1979), aff'd, Lowey v. Watt, Civ. No. 79-3314 (D.D.C. May 29, 1981); Alfred L. Easterday, 34 IBLA 195 (1978); Sidney H. Schreter, supra; Lola I. Doe, supra at 394. We have also affirmed BLM's rejection of offers in which other leasing services held similar undisclosed interests at the time their clients' offers were filed. Gertrude Galauner, 37 IBLA 266 (1978); Marty E. Sixt, 36 IBLA 374 (1978). We adhere to these holdings.

2/ BLM has moved to apply the doctrine of collateral estoppel or res judicata to dismiss the appeal of RSC and Zuckerman. As the latter has not appeared in any proceeding presenting the same situation, and as there are other parties involved, it is appropriate to issue a decision herein, and BLM's motion is denied.

BLM's decision refers to a pending assignment of 50 percent of record title from May to Premco Western, Inc., filed on Nov. 19, 1977. We are unable to locate such an assignment in the case file.

[1, 2] The service agreement in effect at the time Engle filed Morgan's offer gave Engle an "interest" in this offer. 3/ This interest was not abrogated by Engle's unilateral attempt to disclaim it, as Engle did not communicate this putative waiver to Morgan or receive any consideration from him to bind the contract. 4/

As Judge Pratt recently held in Lowey v. Watt, supra, concerning the same putative disclaimer:

> [I]t was * * * invalid because not mutually consented to or supported by consideration. Although authorities are split as to the requirements for an effective disclaimer of a contract right, the common law and majority rule hold a disclaimer valid only if given under seal or in exchange for consideration. Absent a seal or consideration, the disclaimer was ineffective unless the obliged party relied on it to his detriment. Since RSC's disclaimer was not under seal, nor supported by consideration, nor communicated to RSC's clients until after a first place drawing, it did not eliminate its interest in its clients' lease offers. [Footnote omitted.]

We note additionally that this purported amendment and disclaimer, by its own terms, does not apply to the service agreement between Engle and Zuckerman. This agreement was entered into on August 14, 1977, well after January 13, 1977, the date of the amendment and disclaimer, which clearly applies only to agreements extant on January 13. Thus, the purported disclaimer, even if legally effective, would not apply to these offers. Home Petroleum Corp., supra at 204; D. R. Weedon, Jr., supra at 382; Frederick W. Lowey, supra at 385-86.

In Lowey v. Watt, Judge Pratt, reviewing the propriety of this conclusion de novo, stated as follows:

> The IBLA concluded * * * that RSC's disclaimer was not effective to eliminate its interest in any client's lease offer for which the service agreement was signed after the date of the disclaimer. We find this conclusion unassailable. The disclaimer states that Engle "is a party to various contracts" and that he waives any rights "which [he] may have by reason of said service agreements." In addition to the disclaimer's plain language, it is well established that a release that purports to discharge

3/ Lowey v. Watt, supra; Donald W. Coyer (On Judicial Remand), supra at 312; Alfred L. Easterday, supra at 198; Sidney H. Schreter, supra; Lola I. Doe, supra.
4/ Lowey v. Watt, supra; Donald W. Coyer (On Judicial Remand), supra at 313; Alfred L. Easterday, supra at 199.

future rights and claims not yet in existence is not operative to discharge any rights under a contract made subsequently to the release.

> [A] manifested intention [to create an obligation that] is in conflict with the words of the release . . . will prevail over it because later in time . . . . So, also, a contract that is entirely inconsistent with the terms of a previously executed release will prevail over that previous release and destroy its operation.

5A CORBIN, CONTRACTS § 1238, at 560 (1964). The exclusive agency provision of the subsequent service agreement was entirely inconsistent with the language of the earlier release. * * * The earlier disclaimer could not reach or eliminate RSC's interest in * * * offers [such as Zuckerman's]. [Footnote omitted.]

Zuckerman failed to disclose Engle's interest at the time he made his offer, as required by 43 CFR 3102.7, and the lease must therefore be canceled because the offer violated this regulation, 5/ absent a showing that it is protected under the bona fide purchaser provisions of the statute and regulations.

[3] The question of whether the Department is estopped from rejecting Engle's clients' offers was fully considered in Lowey v. Watt, supra; and Donald W. Coyer (On Judicial Remand), supra at 313-14, aff'd, Coyer v. Andrus, supra. We adhere to the holdings that the Department is not estopped to reject these offers.

Judge Pratt, after observing that, in order for estoppel to be appropriate, there must be "affirmative misconduct" on the part of Government officials, held as follows in Lowey v. Watt, supra, concerning this identical issue:

> The BLM officials' actions do not approach the requisite level of "affirmative misconduct." Although the officials erred in agreeing to accept RSC's disclaimer, they did so at RSC's request and to protect RSC's clients until RSC could put a revised service agreement into effect. Further, it would be a misstatement to assert that RSC is without blame. It had notice as early as December of 1976 that its exclusive agency provision was improper and was in clear violation of the regulations, yet it refused to change its service agreement for fifteen months. RSC could have

5/ Lowey v. Watt, supra; Donald W. Coyer (On Judicial Remand), supra; Gertrude Galauner, supra; Marty E. Sixt, supra; Alfred L. Easterday, supra; Sidney H. Schreter, supra; Lola I. Doe, supra.

> entered new service agreements with its existing clients but declined to do so. Plaintiffs have no entitlement to the leases for which they submitted offers, but a mere hope or expectation. Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); McDade v. Morton, 353 F. Supp. 1006, 1010 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974). Against these considerations we must balance the public interest in fair administration of the noncompetitive lease program. All offerors are entitled to assurance that the government will impartially enforce its regulations. Plaintiffs' claim of governmental estoppel is without merit. [Footnote omitted.]

Similarly, in D. R. Weedon, Jr., supra at 383-84, we considered and rejected the suggestion of Engle and his clients that it is unfair to give retroactive effect to our decision to reject offers such as Zuckerman's in which Engle had an undisclosed interest. We adhere to our holding there as well.

[4] Even though Zuckerman's offer was defective, the lease issued pursuant to this offer may not be canceled if it has been assigned to a bona fide purchaser. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2. BLM held that May, the present holder of record of 100 percent of record title to lease W 59245, was not a bona fide purchaser, citing Winkler v. Andrus, 494 F. Supp. 946 (D. Wyo. 1980), and it accordingly canceled this lease.

May Petroleum purchased its interest from Transcontinent Oil. If the latter were shown to have been a bona fide purchaser, then May would be a "remote purchaser" and, as such, would have been protected regardless of its knowledge of defects in the underlying lease offer. Moreover, if May did purchase the lease in good faith, without knowledge of any defect, it would be protected by the bona fide purchase provision. We conclude that May was a bona fide purchaser, reverse BLM's decision, and reinstate the lease.

In order to determine whether an assignee is a bona fide purchaser, it is necessary to examine the state of his knowledge, both actual and constructive, at the time of the assignment. Winkler v. Andrus, 614 F.2d 707, 712 (10th Cir. 1980); O'Kane v. Walker, 561 F.2d 207 (10th Cir. 1977); Southwestern Petroleum Corp. v. Udall, 361 F.2d 650, 656 (10th Cir. 1966). Assignees of Federal oil and gas leases who seek to qualify as bona fide purchasers are deemed to have constructive notice of all of the BLM records pertaining to the lease at the time of the assignment. Winkler v. Andrus, supra at 713; O'Kane v. Walker, supra at 212; Southwestern Petroleum Corp. v. Udall, supra at 655-56. An assignee is not required to go outside those BLM records relating to the particular parcel of land assigned. Ibid.

We must first determine whether the conclusion is influenced by the date when the assignment occurred. The general rule is that the relevant date is the date that the consideration for the assignment was paid. Winkler v. Andrus, 614 F.2d at 712, citing 77 Am. Jur. 2d, Vendor & Purchaser § 706 (1975). 6/ Nevertheless, the Tenth Circuit stated in Winkler that the critical determination time was instead when the agreement was formed, but did not need to resolve this issue, as the result was the same in either case. Here, as in Winkler, it is immaterial whether the time is the date the parties agreed to the assignment or the date consideration was paid.

In June 1978 representatives of Transcontinent notified May that it had verbally agreed to purchase lease W 61810. May informed Transcontinent that it would in turn purchase this interest from it for a cash consideration, provided (1) that Transcontinent completed the purchase, (2) that BLM approved the assignment of the interest to Transcontinent, and (3) that BLM approved the assignment thereof from Transcontinent to May.

On June 6, 1978, Zuckerman executed the BLM form describing the assignment to Transcontinent, which executed this form on June 21, 1978, and filed it for BLM's approval. Also, on June 21, 1978, Transcontinent executed a BLM form describing the assignment to May. May waited until July 25, 1978, the day after BLM approved the assignment from Zuckerman to Transcontinent, to execute the BLM form concerning the assignment from Transcontinent to it. This second form was filed on July 31, 1978, and BLM approved the assignment on August 29, 1978.

The official BLM record was in exactly the same state from June through August 1978, so that May is properly regarded as having the same constructive knowledge throughout this period. We conclude that while the record did contain information which raised some doubt as to the validity of Zuckerman's offer, BLM's issuance of the lease erased this doubt. The copy of Engle's letter to Zuckerman, filed on November 28, 1977, refers to the existence of a "sole party in interest question" and a suggestion that the sales agreement possibly gave Engle an interest in Zuckerman's lease. However, the letter also indicated (incorrectly) that, if Zuckerman signed a new sales agreement, there would be "no question presented." The record contains a copy of a new sales agreement prepared by Zuckerman in compliance with Engle's request. Viewed objectively against this background, BLM's proceeding to issue the lease to Zuckerman was a signal that it had decided that Zuckerman was entitled to a lease because any and all doubts concerning his qualifications had been addressed and resolved in his favor. 7/

6/ See discussion in Home Petroleum Corp., supra at 206 n.8.

7/ We expressly note the distinction between May's right to rely on BLM's erroneous decision that the defect in Zuckerman's offer had been cured and that the lease should issue, and the absence of a right

BLM held that May was not a bona fide purchaser because it acquired its interest from Transcontinent prior to BLM's approving the assignment from Zuckerman to Transcontinent. It is true that Transcontinent executed the assignment form describing the transfer to May on June 21, 1978, well before BLM recognized that Transcontinent had any interest to assign. However, May waited until July 25, 1978, to execute the form, one day after BLM had recognized Transcontinent's interest by approving the assignment from Zuckerman. Moreover, on July 25, 1978, May had no reason to believe that BLM's recognition of Transcontinent's interest was not final, as there was no ongoing protest or adverse interest apparent from the record. Therefore, when May acquired its interest on July 25, 1978, the record revealed no climate of adversity surrounding the interest. Any doubt as to the validity of its interest was surely erased by BLM's approval on August 29, 1978, of May's acquiring its interest. In the absence of any evidence showing that May had actual knowledge of any defect, we hold that May reasonably believed that a valid lease had been issued to Zuckerman and had been duly assigned to Transcontinent, and that May is therefore a bona fide purchaser of this interest.

Geosearch contends that May should have known that Engle had an interest in Zuckerman's offer, as our decisions in Lola I. Doe, supra, issued on August 19, 1977, and Sidney H. Schreter, supra, on September 12, 1977, operated to put Davis on notice that Engle had undisclosed interests in his clients' offers. Moreover, it contends, May should have known that Engle's effort to disclaim this interest by communicating a putative waiver to his winning clients only after the drawing was ineffective, in view of our holding to this effect in Alfred L. Easterday, supra, on March 22, 1978.

We held as follows in Inexco Oil Co., supra at 267:

> First, there is no finding in our Doe decision that all of Engle's clients had the same contractual relationship with him, or that all applications filed by him on their behalf were to be regarded as defective.

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fn. 7 (continued)
in Engle to assert his reliance on this decision as a basis for estopping the Government, discussed above. To May, all that was apparent was that a question about the validity of Zuckerman's offer had apparently been raised and duly resolved in his favor by BLM. No appeal of this resolution was pending or foreseeable. Accordingly, in the absence of an apparent challenge to the correctness of this decision, May could rely on it in good faith, and so become a bona fide purchaser.

The adequacy of Engle's reliance on BLM's erroneous decision as a basis for his invoking the extraordinary relief of equitable estoppel is measured by different, and much stricter, standards. As an insider to the dealings with BLM, Engle understood more clearly than could May the possibility that it would ultimately be found to have violated the regulations, yet he took no steps to secure his position.

> Second, if Inexco was aware of the Doe decision, it had a right to presume that BLM was aware of it also and was processing offers of RSC clients so as to insure that no other such undisclosed interests were represented by such offers. It is, after all, BLM's responsibility to evaluate and adjudicate lease offers, not Inexco's. Moreover, Inexco had a right to presume that BLM had properly discharged this responsibility in this instance, as there is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties. United States v. Chemical Foundation, 272 U.S. 1, 14-15 (1926).
>
> Third, the Tenth Circuit has held assignees to have only such imputed knowledge of the status of the lease as is contained in the official title records maintained in the BLM office. (It goes without saying, of course, that a purchaser would also be charged with notice of filings in the lis pendens records of the court of competent jurisdiction or matters of record in the county where the land was situated.) Winkler v. Andrus, supra at 713; Southwestern Petroleum v. Udall, supra at 655-56. BLM's case file contained no reference to the Doe decision, nor any indication that the circumstances which were addressed in the Doe case also obtained in this instance.

Our comments therein concerning Doe apply equally to Schreter and Easterday, and we accordingly reject Geosearch's argument.

BLM properly rejected and returned the DEC's of Elizabeth H. Carter and Mark A. Guinan, which were drawn with second and third priority, respectively, in the November 1977 drawing. BLM draws DEC's with subordinate priority in order not to have to relist a parcel for offers if the first DEC is rejected. If BLM had previously rejected them, the holders of the second- or third-priority DEC's could not be recognized in the event that a lease issued to a superior offeror was canceled. Estate of Glenn F. Coy, supra at 194-95, 242; Geosearch, Inc., 51 IBLA 59, 61 (1980). The lease has been issued to a superior offeror and may not now be canceled because of any defect in that superior offer, because it has been assigned to a bona fide purchaser. In these circumstances, the second- and third-priority DEC's are properly rejected, as there is no longer any interest at stake to which they apply. Inexco Oil Co., supra; Home Petroleum Corp., supra; see Geosearch, Inc., 41 IBLA at 293.

[5] While we disagree with BLM's holding that the retained overriding royalty interests now held by Zuckerman and Engle 8/ were null

8/ The overriding royalties apparently held by American Express Corporation and possibly by Premco Western, Inc. (see n.2, supra), are unaffected by BLM's decision and remain in effect without necessity for further action in view of our determination that May, which granted these royalties, is a bona fide purchaser.

and void ab initio and find instead, as discussed in Home Petroleum Corp., supra, that these interests are merely voidable, we hold that BLM properly canceled the overriding royalties retained by Zuckerman and RSC, for the reasons set out in Wilbur G. Desens, supra at 279-80; Inexco Oil Co., supra at 269-70; and Wayne E. DeBord, 50 IBLA 216 n.1, 87 I.D. 465 n.1 (1981) (appeal pending).

We adopt the discussion of the Department's authority to cancel overriding royalties set out in Home Petroleum Corp., supra. Having canceled these underlying overriding royalty interests, on remand, BLM should comply with the terms of 30 U.S.C. § 184(h)(2) (1976) and 43 CFR 3102.1-2(b) and sell these interests as provided therein.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, reversed in part, and remanded for further proceedings in accordance herewith.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge